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## DISAPPEARED IN GUATEMALA THE CASE OF EFRAÍN BÁMACA VELÁSQUEZ

### I. INTRODUCTION

*Tens of thousands of Guatemalans have been forcibly "disappeared" by government forces over the past three decades, many of them civilians and some of them combatants. One of the fundamental tasks assumed by the government and guerrillas through the ongoing U.N.-mediated peace process is to end the impunity with which such crimes have been committed. In an agreement on the formation of a commission to study past human rights violations, signed in Oslo on June 23, 1994, the two sides acknowledged "the right of the Guatemalan people to know completely the truth about these*

*events."*<sup>1</sup> *In a separate accord on human rights signed by the parties on March 29, 1994, they agreed on "the need for firm action against impunity."*<sup>2</sup> *In other words, the parties agreed that the truth about human rights violations should be exposed and those responsible should be brought to justice.*

*The disappearance of Efraín Bámaca Velásquez, a combatant with the Unidad Revolucionaria Nacional Guatemalteca (URNG) who was captured by the army in March 1992, puts these solemn commitments to the test, a test which thus far, the government has failed. It is also a case which highlights the fundamental rights that any human being enjoys under both Guatemalan and international law, regardless of his status as a combatant in an armed conflict. While Bámaca's status as a combatant made him subject to investigation and prosecution under domestic law, it by no means gave the army license to secretly detain and "disappear" him.*<sup>3</sup>

*The facts of the Bámaca case open a window into the secretive world of clandestine army detention. The cover-up illustrates a well-established pattern, familiar to many Guatemalans who have sought legal redress for the disappearances of their loved ones. Also typical has been the harassment of Jennifer Harbury, Bámaca's North American wife, who has aggressively pursued the case in a high-profile confrontation with the government.*

*Fear of the army permeates the Guatemalan judicial system, rendering it dysfunctional in resolving disappearances. Habeas corpus petitions presented on behalf of the disappeared are handled mechanically, and investigations are routinely abandoned long before the truth is established. To this day, there has not been a single prosecution in a case of forced disappearance in Guatemala.*<sup>4</sup> *Over the years, the victims have included trade unionists, leftist political activists, students, teachers, peasants, and human rights activists, and many people suspected of having contacts or sympathizing with the guerrillas. Recently, information has surfaced regarding long-term clandestine detention of captured guerrilla combatants as well.*

Guatemala's security forces engaged in massive disappearances beginning in the late 1960s and through a succession of

military governments. The practice has persisted, albeit more selectively, since the army turned the government over to civilians in 1986. According to the Archbishop of Guatemala's Human Rights Office, in 1994, forty-one individuals were forcibly disappeared. Recent victims of disappearance are Lorenzo Quiej Pu, a member of the National Council of Displaced Guatemalans (CONDEG), who disappeared on January 12, 1994, in Guatemala City; Mario López Gabriel and Mariano Gómez Ramos, who disappeared in the village of Tuixiquel-Xemal on February 4, 1994; and José Sucunú Panjoj, an active member of the human rights group CERJ (Consejo de Comunidades Etnicas Runujel Junam), who disappeared on October 29, 1994.

Because Efraín Bámaca Velásquez married U.S. citizen Jennifer Harbury, and because Harbury in 1994 engaged in a dramatic thirty-two day hunger strike in front of the National Palace in Guatemala City, his disappearance has received an unprecedented level of attention from international media, generating tremendous pressure on Guatemalan and U.S. government officials to resolve the case. Nonetheless, as the text of this report shows, the Guatemalan authorities-with the exception of the human rights ombudsman, whose investigation is discussed below-have not undertaken the most basic steps of a serious investigation. Instead they have engaged in a series of legal maneuvers which give the appearance of activity, but do not run the risk of finding the truth. Nearly three years after his disappearance, the whereabouts of Efraín Bámaca Velásquez remain undisclosed.

Like Harbury, relatives of thousands of disappearance victims have pressed unsuccessfully on a series of civilian and military governments to account for the whereabouts of their loved ones. Although the Cerezo (1986-1991) and Serrano (1991-1993) governments went through the motions of setting up formal investigations, these efforts were superficial at best and profoundly disappointing to victims' relatives.<sup>5</sup>

This report is a result of a mission to Guatemala conducted from November 9-12, 1994, by Anne Manuel, Deputy Director of Human Rights Watch/Americas; Makau Mutua, Projects Director at the Harvard Law School Human Rights Program; Bernard Harcourt, a Harvard-educated lawyer and cousin of Jennifer Harbury; Kathryn Cameron Porter, spouse of Congressman John Porter (Republican-Illinois), Chairman of the Congressional Human Rights Caucus; and Craig Powers, aide to Congresswoman Connie Morella (Republican-Maryland). The delegation traveled to Coatepeque, four hours from Guatemala City, to witness the exhumation of bodies the government claimed might match Bámaca. Delegation members met with Guatemalan officials, including Attorney General Acisclo Valladares, and with U.S. Amb. Marilyn McAfee and other ranking U.S. Embassy officials. This report was written by Makau Mutua, Bernard Harcourt and Anne Manuel, and edited by Manuel.

## II. THE DISAPPEARANCE OF EFRAÍN BÁMACA VELÁSQUEZ

Efraín Bámaca Velásquez, a Mam Indian, was born on the Finca El Tablero in the San Marcos region of Guatemala in 1957 and grew up on a coffee plantation on the southwest coast of Guatemala. At eighteen, he joined the guerrillas seeking the overthrow of the Guatemalan government.<sup>6</sup> By 1990, Bámaca, alias Everardo, had risen to the rank of commander of the "Luis Ixmata" front of the Organización Revolucionaria del Pueblo en Armas (ORPA), one of the four guerrilla groups which today form the URNG.<sup>7</sup>

Bámaca and Harbury met while she was researching the insurgency for a book. They married in Texas in September 1991, and Bámaca returned to combat in Guatemala in January 1992.<sup>8</sup> On March 12, 1992, he vanished following a firefight with the army at the Ixcucúa River, in the hamlet of Montúfar, near Nuevo San Carlos, Retalhuleu, in western Guatemala. Bámaca was apparently the only combatant missing after this engagement.

On April 24, 1992, the URNG wrote to Ramiro de León Carpio, who at that time was the Serrano government's human rights ombudsman, about Bámaca's disappearance. The letter notes that the military had publicly stated, and the press repeated, that an unidentified guerrilla had fallen in combat in Montúfar on March 12. The URNG also reports that a

body which supposedly belonged to the fallen guerrilla was buried in the cemetery in the city of Retalhuleu shortly after the confrontation. Other versions, the letter noted, suggest that the army had captured a live guerrilla commander during the firefight and was detaining him secretly, torturing him to elicit information. The letter gave a terse physical description of Bámaca, including his height, eye color, and complexion (described simply as *morena*, or dark).

On May 11, 1992, Ombudsman de León Carpio wrote back to the URNG, giving a detailed description of a body found in Montúfar on March 13, including what it was wearing, its weapons and ammunition. The deceased "supposedly...shot himself in the mouth," the letter stated. According to Harbury, the physical description contained in de León Carpio's letter corresponded with her husband's characteristics.

The URNG then pressed for an exhumation of the body buried in Retalhuleu to determine whether or not it was Bámaca. The URNG also requested forensic photographs of the guerrilla found dead at Montúfar, to which the army responded-according to Harbury-that none had been taken. An exhumation set for May 20, 1992 was interrupted by then-Attorney General Acisclo Valladares, who protested that the proceeding had not been authorized by his office.<sup>9</sup> For more than a year after the interrupted exhumation, the government was able to insist that Bámaca had shot himself and been buried in Retalhuleu.

### **Evidence that Bámaca was Held Alive**

In late December 1992, a guerrilla from Bámaca's unit, who had been captured and held in secret detention by the army for twenty-two months, escaped and provided written testimony about his ordeal to the United Nations Human Rights Commission in Geneva. Santiago Cabrera López, alias Carlos, also reported having seen Bámaca repeatedly, detained and apparently suffering the effects of torture. Cabrera says he last saw Bámaca around July 24 or 25, 1992.<sup>10</sup>

In an interview with Human Rights Watch/Americas, and in a sworn affidavit, Cabrera stated that he and another combatant, Anastasia López Calvo, were captured on March 8, 1991. Both were beaten and severely tortured by officers who demanded information about the URNG. Sometimes in front of his companion, and sometimes alone, Cabrera was beaten with bricks and kicked; soldiers tied a grenade to his face and took off the safety, and applied electric shocks to his legs and testicles. During his twenty-two months of captivity, he was held in a variety of stockades and military bases, in places such as San Pablo and Esquipulas Palo Gordo, in the department of San Marcos, and the San Marcos military zone No. 18, as well as the Santa Ana Berlín military base in Coatepeque, in the department of Quezaltenango. During the early weeks, he told Human Rights Watch/Americas, he and López Calvo were held for days on end in a hole under the ground. In between long periods of interrogation and torture, Cabrera was on several occasions taken to the sites of recent combat or to other barracks to identify captured or slain combatants.

On March 12, 1992, while at the Santa Ana Berlin military base, Cabrera has testified, he heard military intelligence officers comment that they had captured Bámaca in combat in Nuevo San Carlos, Retalhuleu.<sup>11</sup> That day, Cabrera said, he "saw Everardo [Bámaca], with my own eyes, lying on a metal bed, with his hands chained and his feet bound with a rope." Cabrera claimed to have seen Bámaca repeatedly over the next twenty days at Santa Ana Berlín. According to him, Bámaca was kept under interrogation "day and night." In late May, 1992, Cabrera and other prisoners were told that Bámaca was killed attempting to escape and warned never to speak of him.<sup>12</sup>

Cabrera asserted he saw Bámaca again in July 1992, this time at the San Marcos military base No. 18, in the infirmary, with both hands chained and his feet tied to a metal bed. The next day, Cabrera saw Bámaca being interrogated. According to Cabrera:

Everardo sounded sleepy or drugged. He had only his underwear on. His whole body was extremely swollen. His right arm and his left leg were completely

bandaged. His eyes were bandaged as well. Next to him was [a] tank of gas.<sup>13</sup>

A few days later, Cabrera saw Bámaca again. "He was dressed in an army uniform and I could not see his arm or his leg. But his body was no longer swollen. His voice was normal again."<sup>14</sup> That was the last time Cabrera saw Bámaca.

Cabrera escaped to Mexico on December 22, 1992. He has also provided information about thirty-five other URNG combatants who, he says, were held in clandestine detention, like Bámaca, during this period. Practically all are still missing to date. Anastasia López Calvo, who Cabrera says was captured with him, remains in the hands of the army, although in a December 1994 interview with the local office of the human rights ombudsman in San Marcos she stated that she and Cabrera had voluntarily turned themselves in to the army and had been well-treated.<sup>15</sup>

Another combatant, Jaime Adalberto Augustín Recinos, escaped from what he asserted to be clandestine military detention at approximately the same time as Cabrera, although he was allegedly held at different military bases, including those in Santa Lucía Cotzumalguapa, Mazatenango, Chimaltenango, and the Mobile Military Police and military intelligence headquarters in Guatemala City. While being held in the military intelligence headquarters in August 1992, Recinos has stated, an officer told him that Bámaca was being held alive in San Marcos.<sup>16</sup> The government has discounted the assertions of the two combatants on the grounds that they have not presented their charges before a judge in Guatemala.<sup>17</sup>

Various other sightings of Bámaca since his capture have been reported. Bámaca was seen alive in August 1993, according to a reporter with the Guatemalan daily *Prensa Libre*, who interviewed witnesses in the village of El Tumbador, San Marcos, where Bámaca grew up. Several residents, interviewed separately, told the reporter they saw Bámaca brought to the village by two soldiers. He was dressed in an army uniform, but had no weapons. In addition, the reporter claimed to have received previous information from a confidential military source that Bámaca was held in military custody in base No. 18 in San Marcos.<sup>18</sup>

Jennifer Harbury has reported that many individuals approached her in Guatemala in 1994, including a military officer, to tell her they had seen her husband alive in the hands of the army. While reports of this nature proliferate, we are unaware of any accounts that Bámaca has been killed, except for the government's version.

On November 6, 1994, the U.S. television network CBS broadcast a segment of its "60 Minutes" program focusing on the Bámaca case and citing confidential sources that "The CIA had reported they had been told by a source in the Guatemalan army that Everardo was alive after Jennifer [Harbury] was notified he had died in combat. . ." <sup>19</sup> The "60 Minutes" broadcast, and the suggestion that the United States had hidden information about the case from Harbury, prompted intense criticism of the Clinton administration, including a lead editorial in the *New York Times* excoriating U.S. officials for failing to take up publicly Harbury's demands for the return of her husband, dead or alive.<sup>20</sup> (U.S. policy on this case is discussed further below.)

In response to this pressure, the U.S. State Department broke its silence on the case on November 14, for the first time publicly holding the army responsible for Bámaca's disappearance. State Department spokeswoman Christine Shelly told reporters at the daily briefing:

... [W]e have concluded that Efraín Bámaca was taken alive by the army in March 1992. We believe that he had been wounded, but that his injuries were not believed to be life-threatening. We have no information to indicate that he was alive much beyond the first few weeks after his capture, but in our efforts to try to get a better accounting and information on this, we of course have always proceeded on the assumption that he could be alive, and that has been a governing factor for us in terms of trying to get information about the case.<sup>21</sup>

### III. INVESTIGATIONS

This evidence notwithstanding, the Guatemalan army and government have consistently maintained that Bámaca has never been in military custody. "As far as I am concerned," Defense Minister Enríquez told Guatemala's *Teleonce* newscast in November 1994, "he died in that clash," referring to the firefight between the army and guerrillas on March 12, 1992. "I know he is dead," Enríquez repeated.<sup>22</sup>

As international pressure to solve the case mounted, particularly during 1994, the government multiplied investigations, giving the appearance of intense activity. None of these investigations, however, with the exception of that carried out by the human rights ombudsman after Harbury completed a thirty-two-day hunger strike, appeared designed to discover the truth.

#### A. Initial Examinations

On March 13, 1992, the day after the firefight in which Bámaca disappeared, the Guatemalan army announced that its forces had discovered a body in olive green uniform at the Ixcucúa River after an engagement with URNG forces.<sup>23</sup> The army stated that the body had been sent to Retalhuleu for autopsy and burial.<sup>24</sup>

Prior to the autopsy, a justice of the peace had visited the scene where the cadaver was found. His report described the body on the banks of the Ixcucúa River as follows:

...dark complexion, round face, wide forehead, coffee-colored eyes closed, thick eyebrows, flat nose, large mouth, thick lips, straight black hair, shaven moustache, no beard, no moles or scars, height approximately one meter and sixty centimeters, strong features, age approximately thirty years. ...Injuries: bullet wounds, firearms in the head and the back at the level of the waist and spine, cranium destroyed.<sup>25</sup>

According to Harbury, the description in the report matched her husband excepting the absence of scars and moles. Bámaca had many scars on his body and face from his years of combat.<sup>26</sup> However, the autopsy performed by the official Retalhuleu forensic doctor on the body once it was brought from the Ixcucúa River on March 13, 1992, offered an entirely different description:

...a medicolegal examination (*necropsia*) was performed on the cadaver of an unidentified man, apparently about twenty-five years old, light brown skin, slanted eyes, thin moustache, no beard, straight black hair, 1.55 meters tall....<sup>27</sup>

The wounds were also reportedly different from those described by the justice of the peace on what was supposed to be the same body. The autopsy listed the cause of death as "asphyxia by strangulation" and fourth-degree contusions. It also noted "broad laceration and multiple bone fractures of the cranium and face," a "deep traumatic groove" circling the neck, stab wounds in and around the left clavicle, a "firearm entrance wound in the right pectoral region," an "irregular slash wound about five centimeters long" on the right nostril, and a "broad perforation of the colon." The report also noted that the hands were stained with black ink.<sup>28</sup>

Harbury has surmised from these anomalies that the justice of the peace did not personally record the description of the body found at the Ixcucúa River. "Obviously the Juez de Paz [justice of the peace] never saw my husband's body out there at the Río Ixcucúa at all. Instead he saw a different cadaver in olive green, and was given a pre-written description by the army to sign and file with the courts," she stated in a sworn affidavit. Harbury added that journalists who were present that day were not allowed to approach the body or photograph the face, but instead were provided with an official version of what had been found by soldiers present.<sup>29</sup>



Two and a half years later, Attorney General Acisclo Valladares admitted to our delegation that explaining the discrepancy between the justice of the peace's report and that of the forensic doctor is "the key" to the case. He called the governmental investigations "deficient" in failing to address this discrepancy. Valladares acknowledged the possibility that the army had captured Bámaca alive and provided the justice of the peace with a falsified description of a body which matched Bámaca in order to stifle questions about his whereabouts. Or, he suggested, either the justice of the peace or the forensic doctor was not skilled at writing descriptions of bodies.<sup>30</sup>

The differences, however, could hardly be more striking. The body buried in Retalhuleu was younger and shorter than that described by the justice of the peace, and with different facial features. It also bore evidence of injuries which suggested torture and custody, conditions that did not match the army's explanation of Bámaca's alleged demise. The discrepancy between the description of the cadaver in the report of the justice of the peace and the actual body autopsied on the same day, March 13, 1992, remains unresolved.

As described above, in April and May 1992 the URNG exchanged letters with then-Ombudsman Ramiro de León Carpio, who provided a description of the body essentially identical to that found in the justice of the peace report. Since becoming president of Guatemala in June 1993, de León Carpio has refused several requests to meet with Harbury or with Human Rights Watch/Americas about the case.<sup>31</sup> Nor has he been interviewed by any of the investigators appointed to clarify the disappearance.

## **B. First Exhumation**

As noted above, an exhumation of the body buried in Retalhuleu after the fire at the Ixcucúa River was scheduled by the office of the human rights ombudsman for May 20, 1992, at the request of the URNG. Jennifer Harbury traveled to Guatemala to attend the exhumation, but did not publicly identify herself as Bámaca's wife out of fear for her safety. Harbury spoke privately with de León Carpio-at that time the human rights ombudsman-the night before the exhumation and traveled to Retalhuleu with de León's forensic specialist, Leonel Gómez.

In Retalhuleu, Harbury, Gómez, and other observers went to the cemetery where an unidentified cadaver was about to be exhumed.<sup>32</sup> The exhumation was brought to an abrupt halt, however, by Attorney General Valladares, who personally traveled the 186-kilometer journey from Guatemala City to Retalhuleu to interrupt the proceedings. According to Valladares, the local prosecutor from Retalhuleu had told him that the ombudsman had organized the exhumation even though there would be no one present who could identify the body. When asked why he personally traveled to Retalhuleu, instead of ordering his local representative to act in his place, Valladares told our delegation that he did many unusual things during his tenure as attorney general.<sup>33</sup>

In July 1993, Harbury returned to Guatemala and herself filed in court for the exhumation of the body buried in the Retalhuleu cemetery.<sup>34</sup> On August 17, 1993, the court-ordered exhumation finally took place.

Among those present at the exhumation were the Retalhuleu judge who had previously ordered the exhumation; the Retalhuleu forensic expert who had performed the official autopsy on March 13, 1992; Dr. Michael Charney, an independent forensic doctor retained by Harbury; Janet Hawkins, an associate editor of Harvard Magazine; representatives from the United States Embassy, the Guatemalan Public Ministry and the Department of Health; and Harbury.<sup>35</sup>

After several bodies had been exhumed, the Retalhuleu forensic doctor identified the one he had autopsied on March 13, 1992, and allowed Dr. Charney to examine it. He determined the body to be that of an eighteen- to twenty-year-old male. The upper front teeth were capped in metal. Bámaca, thirty-five at the time of his disappearance, did not have metal caps on his front teeth.<sup>36</sup>

Following this exhumation, Harbury met with the Guatemalan minister of defense, General Enríquez, in August 1993 and in January and May 1994. While General Enríquez stated at one point that he was ordering a search for Bámaca, he maintained throughout that the army had never captured him.<sup>37</sup> Guatemalan military officials have at times suggested that Bámaca killed himself to avoid being captured, became a Zapatista guerrilla in the Mexican state of Chiapas, or undertook a secret URNG mission that he did not disclose to Harbury. They have also suggested that the URNG switched the bodies in the Retalhuleu cemetery, although this would not explain the discrepancy between the justice of the peace's description of the body and that provided by the original forensic doctor on the body presented for autopsy.<sup>38</sup>

### C. The Special Commission

On October 11, 1994, Harbury began a hunger strike in front of the National Palace in Guatemala City, an action which would last thirty-two days. The flood of press attention that her action provoked put unprecedented pressure on both the U.S. and Guatemalan governments to resolve the case. On October 27, President de León Carpio announced the establishment of a special commission headed by Guatemala's ambassador to the OAS, César Alvarez Guadamuz, to "investigate and elucidate the cases of Efraín Bámaca Velásquez and the alleged existence of clandestine prisons in Guatemala that some groups claim exist."<sup>39</sup> This commission does not appear to have taken any action to date.

### D. Second Exhumation

On Thursday, November 3, 1994, Harbury-while attending a hearing on her case before the Supreme Court in Guatemala City-was notified by a public prosecutor that the next morning in Coatepeque there would be an exhumation of two bodies, one of which might be her husband's. Harbury objected to the exhumation, on the grounds that the bodies in question-according to court records-had been interred ten days before Bámaca's disappearance and in a different location. Nonetheless, Harbury traveled the 214 kilometers to Coatepeque, and there filed for postponement. The exhumation was rescheduled for November 10.

Predictably, the November 10 exhumation did not yield Bámaca's body. Instead, it produced the remains of two younger men who had been shot in the back and side of the head.<sup>40</sup> When Human Rights Watch/Americas sought to determine who had ordered the futile exercise, officials scrambled to avoid taking responsibility. Attorney Leonel Machuca, the Guatemala City-based prosecutor from the Public Ministry assigned to the case, stated emphatically to our delegation that the Supreme Court ordered the exhumation as part of a special investigation requested by Attorney General Valladares.<sup>41</sup> Valladares, on the other hand, insisted to us that Machuca requested the exhumation as part of the Public Ministry's investigation.<sup>42</sup>

### E. The Ombudsman's Investigation

On June 2, 1994-in response, he told our delegation, to a letter from Amnesty International about Bámaca's disappearance-Attorney General Valladares filed a habeas corpus action with the Supreme Court naming as defendants the president, minister of defense, minister of the interior, and all military or civilian authorities who could be involved in Bámaca's disappearance. According to Valladares, the Supreme Court ordered all the judges in the country to make unannounced visits to all the military bases within their jurisdictions to find Bámaca, which, he claims, was done. On September 1, 1994, the Supreme Court dismissed the habeas corpus action, finding that there was no evidence Bámaca had been detained. No attempt was made to interview military officers accused of detaining and torturing Bámaca, nor those who participated in the firefight in which Bámaca disappeared. Nor did the court investigate the complete mismatch between the report of the justice of the peace and the body autopsied in Retalhuleu.<sup>43</sup>

Following the dismissal of the habeas corpus action, Valladares petitioned the Supreme Court for a "special proceeding," a new kind of investigation permitted under the new criminal procedures code implemented on July 1, 1994.<sup>44</sup> Under the new code, the Supreme Court can order a special investigation if there is reason to believe that an individual has been detained, even after a habeas corpus action has been dismissed. The investigation can be carried out by either the human rights ombudsman, a non-governmental organization legally incorporated in Guatemala, or the spouse or relatives of the victim. During the week of November 7, 1994, the Supreme Court ordered the special proceeding and turned the investigation over to Human Rights Ombudsman Jorge Mario García Laguardia, directing him to file a report by December 9, 1994.<sup>45</sup> This procedure in no way substitutes for the obligation on the part of the Public Ministry to investigate Bámaca's disappearance, Valladares acknowledged in our interview.

García Laguardia quickly made clear that he disagreed with his designation as investigator and that his first action in the case would be to challenge the constitutionality of the special procedure with the Constitutional Court, on the grounds that criminal or judicial investigations are not the role of his office.<sup>46</sup> Despite his objections and time constraints on his investigation, the ombudsman's inquiry was the first serious effort to locate Bámaca.

The ombudsman appealed for assistance to the newly installed United Nations human rights verification mission (known as MINUGUA), and MINUGUA members accompanied the ombudsmen's staff throughout the investigation. In addition to visiting numerous military bases and police stations to search for Bámaca, the ombudsman's investigators interviewed military officers named as responsible for Bámaca's detention and torture by Santiago Cabrera López, the guerrilla who escaped army detention. As noted above, they also interviewed Anastasia López Calvo, a guerrilla who has remained in army hands since her capture in 1991.

During the inspection of the Mariscal Zavala military base in Guatemala City by the ombudsman's staff, a soldier, when shown a photograph of Bámaca, said he recognized him as having been detained in the base two weeks earlier. The soldier, Carlos Alfredo Yupe, reported that the detainee he had seen walked with a limp because of an injury to his right leg. A military officer then showed the ombudsman's team the registry of soldiers detained at the base and suggested that the person Yupe was referring to was a soldier named Ernesto Guzmán Calderón, who had since been transferred to the military base in Puerto Barrios. At the ombudsman's office's request, two soldiers-Guzmán Calderón and another identified as Amadeo Sánchez-were then brought to the capital from Puerto Barrios and presented to Yupe, who declared that indeed they were the ones he had remembered seeing. Neither, according to the ombudsman, matched the photograph of Efraín Bámaca.<sup>47</sup>

The military officers interviewed by the ombudsman's investigators all denied any knowledge of Bámaca's capture or demise, although three of them said that they knew "soldier" Santiago Cabrera López-the guerrilla who escaped army clandestine detention in 1992 and named the officers as Bámaca's torturers.<sup>48</sup>

The ombudsman's investigation failed to address the most obvious anomaly of the case-the dramatic discrepancy between the justice of the peace description of the body allegedly found at the scene of the battle on March 12, 1992, and the forensic doctor's description of the body brought from the battle to Retalhuleu the next day. The ombudsman's office formally requested the secretary of the Supreme Court to report whether or not the justice of the peace Sergio Virgilio Orozco Orozco and his secretary, Gustavo Adolfo Maldonado de León, still worked for the judiciary and if so, in what capacity. The Supreme Court had not responded to the request by the time the ombudsman's report had to be filed, a little more than a week later.<sup>49</sup>

The ombudsman's investigation demonstrated how difficult it is in Guatemala for civilian investigators to find any traces of someone whose fate the army is determined to hide. The army's refusal to acknowledge Bámaca's capture, and its insistence that Bámaca died in the firefight of March 12, 1992, despite all evidence to the contrary, has thus far proved an insurmountable obstacle to investigators. Despite these difficulties, the Public Ministry has the legal



obligation to investigate and resolve the disappearance of Efraín Bámaca.

## F. Attorney General Sues Jennifer Harbury

In late November, 1994, Attorney General Valladares filed a civil complaint against Jennifer Harbury under a rarely used article of the Civil Code called *jactancia*. The complaint was based on a press report quoting Harbury as threatening to file criminal charges against the military for the disappearance of her husband. Were the *jactancia* case to proceed, Harbury would be given fifteen days in which to file charges, or cease alleging criminal conduct by the army. On December 2, 1994, the court prohibited Harbury from leaving the country in connection with the suit. This prohibition was lifted, however, ten days later, and on January 25, 1995, the judge ruled that he did not have jurisdiction over the case because *jactancia* applies only to cases involving property disputes. Because the Civil Procedures Code makes this clear in its Article 225, the attorney general's action appeared to be simple harassment and an attempt to stifle Harbury's freedom of expression.

Also in November, Harbury was threatened with death in a written communiqué signed by the so-called Anticommunist Patriotic Union (*Unidad Patriótica Anti-Comunista*), and delivered to the Guatemalan newspaper *El Gráfico*. The communiqué listed eight people "who should be eliminated completely," with Harbury topping the list. Such death lists are a common form of intimidation widely believed to originate with the security forces, who employ fictitious names such as Anticommunist Patriotic Union to appear independent.

## IV. THE ROLE OF THE UNITED STATES

The Clinton administration, and especially its Ambassador in Guatemala, Marilyn McAfee, made early efforts to help Harbury by raising her case privately with Guatemalan officials, including Defense Minister Enríquez, and by facilitating her access to those officials. The fact that Enríquez agreed during discussions in 1993 to investigate the case, while denying responsibility for the disappearance, initially seemed encouraging, U.S. officials told Human Rights Watch/Americas at the time.

However, as months passed without any serious governmental efforts to resolve the case, and as Harbury raised the public visibility of her search by launching her 1994 hunger strike, pressure built on the Clinton administration to take up her case publicly. Quiet diplomacy had clearly failed.

Nonetheless, the administration was reluctant to openly criticize the Guatemalan government. State Department officials emphasized the delicacy attached to U.S. participation—together with Norway, Spain, Mexico, Venezuela, and Colombia—in the Group of Friends of the U.N.-mediated peace talks for Guatemala. According to these officials, the Group of Friends had agreed not to make public comments which could affect the talks. Human Rights Watch/Americas has insisted that the administration ought not bite its tongue on human rights cases, as if protesting such abuses would somehow make the U.S. appear partial in its diplomatic efforts. Indeed, public criticism of human rights violations and laws of war violations as they occur, by either government forces or guerrillas, would send a clear message that compliance with international human rights standards is a vital ingredient of a stable peace accord. For example, during the critical months after the government and guerrillas signed a human rights agreement in March 1994, the Clinton administration avoided comment on human rights in Guatemala, even as the government and guerrillas were blatantly violating the accord they had just signed. Public criticism would have pressured both parties to take seriously the commitments they had made.

The Clinton administration's public silence on the Bámaca case provoked intense criticism in the U.S. as the case became well known. In particular, the allegations in a "60 Minutes" broadcast that the CIA possessed information that

Bámaca had been captured alive, but had not provided that information to Harbury, prodded the administration to break its silence. And on November 9, 1994, the lead editorial in the *New York Times* criticized U.S. Amb. Marilyn McAfee and Richard Nuccio, an advisor to Assistant Secretary of State for Inter-American Affairs Alexander Watson, for not publicly supporting Harbury's efforts. On November 10, 1994, Ambassador McAfee delivered a formal *démarche* to President de León Carpio, which was followed by a public comment at the State Department on November 14. In both instances, the U.S. affirmed that the army had taken Bámaca alive, with superficial wounds, in March 1992, and that he had been held alive for at least several weeks thereafter. U.S. officials repeated the *démarche* in early February, making clear that the government of Guatemala can and should explain what became of Bámaca.

The Clinton administration has resisted pressure to attach some form of sanction to the Guatemalan government's failure to explain Bámaca's whereabouts. U.S. officials considered canceling a previously scheduled joint civic action between U.S. National Guard units and the Guatemalan army called "Fueres Caminos", but then went ahead with the program.

Nearly four months have passed since Ambassador McAfee's original *démarche* to President de León Carpio, and the government still refuses to provide an accounting of Bámaca's whereabouts. The Clinton administration should reiterate publicly its insistence that answers be provided and should attach clear conditions, such as the suspension of any further joint programs with the Guatemalan army, both National Guard exercises and U.S. military training for the Guatemalan army, until the army can-at a minimum-provide a credible explanation of what became of Efraín Bámaca after his capture. Washington should insist that if Bámaca is still alive, he should be produced immediately and either released or turned over to the appropriate court for investigation and prosecution. Whether he is alive or dead, those responsible for his secret detention and torture should be presented to civilian courts for prosecution and punishment, in keeping with the government's commitment in the March 29, 1994 human rights accord to end impunity and severely punish those responsible for disappearances.

## V. CONCLUSIONS AND RECOMMENDATIONS

### Conclusions

- Efraín Bámaca Velásquez, a URNG commander, was captured and forcibly disappeared by the Guatemalan army on March 12, 1992. To cover up the disappearance, the body of an unknown man was delivered to the morgue in Retalhuleu for autopsy and burial. Bámaca's current whereabouts are unknown, except by those in the army responsible for his secret detention and possible murder.
- The Guatemalan authorities have been unable or unwilling to account for the whereabouts of tens of thousands of victims of disappearances; although this cruel practice has become more rare in recent years, it continues to be used by the authorities with impunity.
- With the exception of the investigation undertaken by the human rights ombudsman, all other governmental inquiries into the Bámaca case have given the appearance of activity, without running the risk of finding the truth. The failure of the ombudsman's investigation to determine Bámaca's whereabouts demonstrates how difficult it is for civilian investigators to find any traces of someone whose fate the army is determined to hide.

### Recommendations

- The Public Ministry, which is legally responsible for investigating Bámaca's disappearance, should press the army to explain what became of Bámaca after his capture on March 12, 1992. Investigators should find the explanation for the

discrepancy between the justice of the peace's initial description of the body allegedly found at the sight of the combat, a description later repeated by then-Ombudsman Ramiro de León Carpio, and the body autopsied and buried the next day in Retalhuleu. Soldiers and officers involved in the firefight on March 12, as well as those on duty at the Santa Ana Berlin military base, should be closely questioned about the case.

- MINUGUA, the United Nations human rights verification mission, should continue to study the case carefully and to monitor and report on the Guatemalan authorities' investigation.

- The Clinton administration should continue to press the Guatemalan government to produce Bámaca and to explain what became of him after his capture. The administration should insist that those responsible for Bámaca's secret detention and torture be presented to civilian courts for prosecution and punishment. Absent genuine progress in the case, Washington should curtail programs involving the Guatemalan army, such as joint civic action programs and military training. Should these measures prove ineffective, the administration should seriously consider additional sanctions.

### *Human Rights Watch/Americas*

Human Rights Watch is a nongovernmental organization established in 1978 to monitor and promote the observance of internationally recognized human rights in Africa, the Americas, Asia, the Middle East and among the signatories of the Helsinki accords. It is supported by contributions from private individuals and foundations worldwide. It accepts no government funds, directly or indirectly. Kenneth Roth is the executive director; Cynthia Brown is the program director; Holly J. Burkhalter is the advocacy director; Anne S. Johnson is the development director; Gara LaMarche is the associate director; Juan E. Méndez is general counsel; Susan Osnos is the communications director; and Derrick Wong is the finance and administration director. Robert L. Bernstein is the chair of the board and Adrian W. DeWind is vice chair. Its Americas division was established in 1981 to monitor human rights in Latin America and the Caribbean. José Miguel Vivanco is executive director; Anne Manuel is deputy director; James Cavallaro, Sebastian Brett, Robin Kirk, and Gretta Tovar Siebentritt are research associates; Joanne Mariner is the Orville Schell Fellow; Steve Hernández, Vanessa Jiménez are associates. Peter D. Bell is the chair of the advisory committee and Stephen L. Kass and Marina Pinto Kaufman are vice chairs.

1 *Acuerdo sobre el establecimiento de la Comisión para el esclarecimiento histórico de las violaciones a los derechos humanos y los hechos de violencia que han causado sufrimientos a la población guatemalteca*, Oslo, June 20, 1994.

2 *Acuerdo Global sobre Derechos Humanos*, Mexico, D.F. March 29, 1994.

3 The Guatemalan army appears unwilling to acknowledge the rights of combatants. In a television interview in November 1994, Defense Minister Gen. Mario Enríquez Morales criticized the media for giving the Bámaca case so much coverage: "...this is an attempt to turn someone who has committed atrocities in Guatemala into a martyr. He has kidnapped, he has extorted, he has demanded war taxes, he has killed, and he has crippled a whole lot of soldiers in the Guatemalan Army. He has done all sorts of things, he has blown up bridges, towers and so forth. Now they want to make a martyr out of him." (*Teleonce*, Foreign Broadcast Information Service (FBIS), Latin America, November 29, 1994, p. 27.) A similar perspective was voiced regarding a different case by Gen. Julio Balconi in an interview with Human Rights Watch/Americas in October 1993. Speaking of an ex-combatant allegedly responsible for violent abuses against the civilian population who was nearly lynched by civil patrollers in Todos Santos Cuchumatán in August 1993, Balconi said no one would be punished for beating and nearly killing the guerrilla because he had "lost" his rights when he joined the guerrilla movement. [See Human Rights Watch/Americas, *Human Rights in Guatemala During President De León Carpio's First Year* (New York: Human Rights Watch, 1994), pp. 47-48.]

<sup>4</sup> "Disappearance" is a euphemism for an arbitrary or illegal detention which is denied by the authorities. The term was first used to describe a practice employed massively in Guatemala in the 1960s, when many political opponents were kidnapped by government forces and never seen again. The technique was used systematically by military regimes in Argentina and Chile during the 1970s, in El Salvador and Honduras in the 1980s, and is used in Peru, Colombia, and Guatemala today. A common thread to the practice is the involvement of specialized, highly secret bodies within the military which, although directed through a clandestine chain of command, have the necessary credentials to prevent interference from public security forces. Victims are taken to secret detention centers where they are interrogated and tortured, beyond the reach of court inspections and controls. Often they are executed after interrogation and torture. (See Americas Watch, "Clandestine Detention in Guatemala," *A Human Rights Watch Short Report*, vol. V, no. 2, March 1993; and Juan E. Méndez and José Miguel Vivanco, "Disappearances and the Inter-American Court: Reflections on a Litigation Experience," *Hamline Law Review*, Summer 1990, vol. 13, no. 3, pp. 510-511.)

<sup>5</sup> Americas Watch, *Closing the Space: Human Rights in Guatemala May 1987-October 1988*, (New York: Human Rights Watch, 1988), pp. 49-61; and Minnesota Lawyers International Human Rights Committee, *Expectations Denied: Habeas Corpus and the Search for the Disappeared*, (Minneapolis: 1988).

<sup>6</sup> Jennifer Harbury, *Bridge of Courage: Life Stories of the Guatemalan Compañeros & Compañeras* (Monroe, Maine: Common Courage Press, 1994) pp. 182-83.

<sup>7</sup> Affidavit of Jennifer Kristina Harbury, October 4, 1994, p. 2 (hereinafter Harbury Affidavit).

<sup>8</sup> The common law marriage was legally recognized in 1993.

<sup>9</sup> Human Rights Watch/Americas delegation interview with Attorney General Acisclo Valladares in Guatemala, November 1994 (hereinafter Valladares interview). In early 1994, under a broad judicial sector reform, the office of the attorney general was split into two separate functions: the attorney general's office (headed by *Procurador General* Acisclo Valladares) and the Public Ministry, headed by a prosecutor general (*Fiscal General* Ramsés Cuestas). As attorney general, Valladares serves as the legal advisor to the president, the legislature, the courts, the Public Ministry and the municipal governments. The prosecutor general is in charge of criminal prosecutions.

<sup>10</sup> Human Rights Watch/Americas interviewed Santiago Cabrera López in Washington on October 5, 1994. Although we were unable to independently verify the information he provided, we found his testimony credible and consistent with existing evidence about clandestine army detention and the use of torture to obtain information. Our account also draws on an affidavit Cabrera López wrote describing his experiences in clandestine detention (hereinafter Cabrera Affidavit, Washington, D.C., October 7, 1994).

<sup>11</sup> Cabrera Affidavit, paragraph 48.

<sup>12</sup> Cabrera Affidavit, paragraphs 55-60.

<sup>13</sup> Cabrera Affidavit, paragraph 69. Cabrera did not know what kind of "gas" was in the tank. He described it as green, and said the tank had what looked like a clock or timer on top and several narrow valves (Affidavit, paragraph 66)

<sup>14</sup> Cabrera Affidavit, paragraph 70.

<sup>15</sup> Memorandum No. 169-94, from the San Marcos representative of the human rights ombudsman, Flor de María Dell de González to Ricardo Alvarado Ortigoza, deputy ombudsman, Guatemala City, December 14, 1994. López Calvo's

situation appears to be similar to that of a number of guerrillas who were captured by the army and then forced to publicly declare that they have been well-treated and joined the army of their own free will. Some of these ex-combatants have remained with the army as collaborators for years. (See Americas Watch, "Clandestine Detention in Guatemala.") In her statement to the ombudsman, López Calvo says that one month and fifteen days after she turned herself in to the army, she was allowed to leave and visit her family. This statement contradicts the notion that López Calvo was free to come and go as she pleased.

16 Testimony of Jaime Adalberto Agustín Recinos, Comisión de Derechos Humanos de Guatemala, San José, Costa Rica, February 1993, p. 34.

17 Human Rights Watch/Americas interview with Col. Otto Noack Sierra, Washington, D.C. October 5, 1993.

18 Human Rights Watch/Americas delegation Interview with *Prensa Libre* reporter, Coatepeque, November 10, 1994.

19 CBS, "60 Minutes," November 6, 1994.

20 "Guatemala: Change the Message," *New York Times*, November 9, 1994.

21 Transcript of State Department Regular Briefing by Christine Shelly, Federal News Service, November 14, 1994.

22 *Teleonce*, FBIS, November 29, 1994, p. 27.

23 URNG combatants often wear olive green uniforms.

24 "U.S. Wife of Rebel Shakes Guatemala", *San Francisco Chronicle*, September 17, 1993; Janet Hawkins, "Confronting a 'Culture of Lies'", *Harvard Magazine*, September-October 1994, p. 49; and Harbury Affidavit, p. 3.

25 ...*Tez morena, cara redonda, frente amplia, ojos cerrados color café, cejas pobladas, nariz chata, boca grande, labios gruesos, pelo lacio color negro, bigote rasurado, barba no tiene, no tiene lunares ni cicatrices, talla aproximada un metro con sesenta centímetros, compleción fuerte, edad aproximada treinta años....Lesiones que presenta: Heridas por proyectil, armas de fuego en la cabeza y en la espalda a la altura de la cintura y columna, el cráneo lo tiene destrozado.* Case Number 395/92, Second District Court of Retalhuleu, Description dated March 13, 1992, signed by Lic. Sergio Virgilio Orozco Orozco, transcribed before Notary Antonio Argueta Beltrán, August 23, 1993, Retalhuleu. (Human Rights Watch/Americas translation)

26 Harbury Affidavit, p. 8.

27 ...*se practicó la necropsia médico legal, en el cadáver de una persona NO IDENTIFICADA, individuo de sexo masculino, de veinticinco años de edad aparente, tez morena clara, achinado, bigote fino, sin barba, cabello negro lacio, de un metro cincuenta y cinco centímetros de estatura....* (Human Rights Watch/Americas translation)

28 Autopsy report by Dr. Mario E. Ovando de León, March 16, 1992, Retalhuleu, provided to Second District Court judge in case number 395-92, transcribed before Notary Antonio Argueta Beltrán, Retalhuleu, August 23, 1993.

29 Harbury Affidavit, p. 8.

30 Valladares interview.



31 Human Rights Watch/Americas has traveled to Guatemala four times during President De León Carpio's presidency. Each time we have formally requested a meeting with the president to discuss human rights issues. On three of these occasions, our request was denied. In September 1994, a meeting with the president was scheduled by the Foreign Ministry, but cancelled at the last minute by COPREDEH, the executive branch human rights agency.

32 Harbury Affidavit, pp. 4, 9.

33 Valladares was named attorney general by President Jorge Serrano Elías in January 1991 and impeached in October 1992 by the Congress, on charges of corruption for which he was later cleared. He was named attorney general again under the current administration in 1994.

34 Harbury Affidavit, pp. 7-8.

35 Hawkins, "Confronting a Culture of Lies," p. 50; Harbury Affidavit, p.10.

36 Hawkins, "Confronting a Culture of Lies," pp. 50, 52; and Harbury Affidavit, p. 10.

37 Meeting between General Enríquez and human rights organizations, January 25, 1994; and Harbury Affidavit, pp. 11, 14-18.

38 "U.S. Wife's Resolute Quest Shakes Guatemala", *New York Times*, November 6, 1994; "U.S.-Guatemalan Ties Strained by One Woman's Protest", *Los Angeles Times*, October 31, 1994.

39 Statement by Embassy of Guatemala in Washington, "President de León Carpio: 'Bámaca Case Will be Investigated,'" Washington, October 28, 1994.

40 Human Rights Watch/Americas delegation interview with Dr. William Haglund, forensic anthropologist from the Seattle Medical Examiner's Office, who examined the body at Harbury's request. Haglund's presence in Coatepeque was arranged by Physicians for Human Rights.

41 Human Rights Watch/Americas interview with Leonel Machuca Quiroa, Coatepeque, November 10, 1994.

42 Valladares interview

43 Valladares interview.

44 *Procedimiento Especial de Averiguación, Título II, Código Procesal Penal, Decreto Número 51-92.*

45 Valladares interview. Valladares stated that the Supreme Court did not choose Jennifer Harbury to lead the special proceedings because she had not proved to the court's satisfaction that she was married to Bámaca. Although Harbury presented a Texas marriage certificate, proof of marriage in Guatemala is a person's birth certificate, Valladares said, and Bámaca's birth certificate still identifies him as single.

46 Press Conference of Dr. García Laguardia on November 11, 1994.

47 *Informe Final del Procedimiento Especial de Averiguación Encomendado por la Corte Suprema de Justicia en el Caso Bámaca Velásquez, Ref. Proc. Esp. Averig. 1-94, Not. 2o., pp. 19-20.*

<sup>48</sup> Ibid, pp. 12-14. According to Cabrera, he was often required to dress in army uniform during his captivity so he would appear to be a soldier, rather than a prisoner.

<sup>49</sup> Ibid, pp. 6-8.